

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re KOMAKI ROMAN HAYLE,
Debtor.

In re KOMAKI ROMAN HAYLE,
Appellant,

No. C 08-4928 MHP
Bankr. Case No. 08-46003

v.

MARTHA BRONITSKY, Trustee,
Appellee.

**ORDER DENYING MOTION FOR
STAY OF BANKRUPTCY COURT
PROCEEDINGS**

This matter is before the undersigned judge as a general duty matter in Judge Patel's absence.

Appellant appeals the bankruptcy court's October 21, 2008 order modifying the automatic stay and allowing the trial in an unlawful detainer matter to go forward in state court on October 22, 2008. The bankruptcy court's order, however, provided that regardless of the outcome of the state court proceedings, appellant could not be evicted absent further order of the bankruptcy court. On October 22, 2008, the state court entered judgment in favor of creditor/appellee. The bankruptcy court is scheduled to hear appellee's motion for relief from the automatic stay, in which appellee/creditor seeks to lift the stay in order to evict appellant, on November 7, 2008. On October 28, 2008, appellant filed with this court a motion to stay the November 7, 2008 bankruptcy court hearing.

At the outset, the court notes that Federal Rule of Bankruptcy Procedure 8005

1 governs appellant's motion for a stay. Under that rule, appellant should have first
2 presented the motion for a stay to the bankruptcy court. Nevertheless, this court has
3 considered appellant's motion for a stay and DENIES a stay because it appears to the
4 undersigned judge that the October 21, 2008 order modifying the stay from which appellant
5 appeals is *not* a final order. See *Allen v. Old Nat'l Bank of Washington (In re Allen)*, 896
6 F.2d 416, 418 (9th Cir. 1990). That order simply allowed the state court proceedings to
7 conclude as scheduled on October 22, 2008, which they did. The bankruptcy court's final
8 determination regarding whether or not to lift the stay will not occur until after the November
9 7, 2008 hearing. Because appellant's appeal appears to constitute an improper
10 interlocutory appeal, the court DENIES the motion for the stay. The bankruptcy court's
11 November 7, 2008 hearing shall go forward as scheduled.

12 **IT IS SO ORDERED.**

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14 Dated: November 6, 2008



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16 PHYLIS J. HAMILTON
United States District Judge

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